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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/065,720	11/13/2002	Casey J. Grant	BLR920010212	6154

30449 7590 11/29/2004  
SCHMEISER, OLSEN + WATTS  
SUITE 201  
3 LEAR JET  
LATHAM, NY 12033

EXAMINER

DEO. DUY VU NGUYEN

ART UNIT PAPER NUMBER

1765

DATE MAILED: 11/29/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action**

Application No.

10/065,720

Applicant(s)

GRANT ET AL.

Examiner

DuyVu n Deo

Art Unit

1765

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 15 November 2004 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

**PERIOD FOR REPLY** [check either a) or b)]

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
- ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on \_\_\_\_\_. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☐ The proposed amendment(s) will not be entered because:
- (a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);
- (b) ☐ they raise the issue of new matter (see Note below);
- (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_

3. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.
4. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☐ will not be entered or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: \_\_\_\_\_

Claim(s) objected to: \_\_\_\_\_

Claim(s) rejected: 1-16 and 21-23.

Claim(s) withdrawn from consideration: \_\_\_\_\_

8. ☐ The drawing correction filed on \_\_\_\_\_ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). \_\_\_\_\_
10. ☐ Other: \_\_\_\_\_

Continuation of 5. does NOT place the application in condition for allowance because: Referring to applicant's argument that Ito doesn't show the fluid is in direct physical contact with the substrate, please see Merriam Webster's Collegiate Dictionary, 21 (10th edition, 1997). One of the definition of the word "against" is "in opposition to." Therefore, it is not necessary that "against" means always in physical contact with. Figure 1 in Ito shows the fluid is flowed in opposition to the substrate.

Referring to applicant's argument that there is no indication for the modification by Futase because he doesn't suggest the etch rate varies spatially over the surface of the substrate, the fact that Futase doesn't talk about it doesn't mean it doesn't happen. Furthermore, in response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

Referring to applicant's argument that Futase has no available apparatus for selectively controlling the spatial distribution of the fluid in relation to the lower surface of the substrate, therefore, Ito's teaching can not enabled by Futase, the claims are not apparatus claims, but method claims. Therefore, the argument is not persuasive.

Referring to applicant's argument that Futase in view of Ito does not suggest the measuring the temperature of the fluid proximate to the annular opening or near the edge of the substrate, it is obvious that Ito teaches of measuring or sensing the T of the fluid that flows into the opening 104 and the fluid would flow proximate or near the edge of the substrate 102; therefore, his method would include measuring or sensing the T of the fluid that flow proximate or near the edge of the substrate 102.

The temperature control would be used to control temperature that needed to be changed. It is obvious to any skilled in the art to use the temperature controller to control the fluid taught by the method of Futase in light of Ito because it is the fluid's temperature is needed to be regulated.

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